

DA 99-692  
April 13, 1999

Ms. Sylvia Lesse  
Kraskin, Lesse & Cosson, LLP  
2120 L Street, NW, Suite 520  
Washington, DC 20037

Re: Petition for Acceptance of Late-Filed Application

Dear Ms. Lesse:

This letter responds to your March 30, 1999 petition on behalf of Elite JV ("Elite"), requesting that the Commission accept Elite's late, manually-filed short-form application (FCC Form 175) and seeking a one-day extension of the short-form deadline for Auction No. 23.<sup>1</sup> You claim that technical problems delayed the filing of Elite's application and request that the Commission accept Elite's application after the deadline of March 29, 1999 at 5:30 p.m (EST) so that Elite may participate in the Commission's Local Multipoint Distribution Service ("LMDS") auction.<sup>2</sup>

In substance, you are seeking a waiver of the filing deadline for submission of short-form applications. In order to obtain a waiver of the Commission's auction application filing deadline rules,<sup>3</sup> Elite must show: (i) that the underlying purpose of the rule will not be served, or would be frustrated, by its application in the particular case, and that grant of the waiver is otherwise in the public interest; or (ii) that the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest.<sup>4</sup> For the reasons stated below, we find that your petition and the circumstances surrounding Elite's waiver request fail to meet the Commission's criteria for granting a waiver.

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<sup>1</sup> See Petition of Elite JV for Acceptance of Late-Filed Application ("Petition").

<sup>2</sup> Petition at 2-3.

<sup>3</sup> 47 C.F.R. §§ 101.1104 and 1.2105.

<sup>4</sup> 47 C.F.R. § 1.925(b)(3). See also 47 C.F.R. § 101.23 (waiver of the Part 101 rules may be granted in accordance with § 1.925); *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

Ms. Sylvia Lesse  
April 13, 1999  
Page Two

The Commission established the March 29, 1999 filing deadline in the *LMDS Public Notice*, which was released on January 29, 1999.<sup>5</sup> The Commission's rules require the electronic filing of FCC Form 175 applications as noted in the *LMDS Public Notice*.<sup>6</sup> To facilitate filing, the Commission's remote access system was available for submission of applications 24 hours per day beginning March 5, 1999.<sup>7</sup> Applicants were cautioned that late applications would not be accepted.<sup>8</sup>

The petition states that Elite's consultant "initiated" submission of Elite's FCC Form 175 application 30 minutes before the submission period ended and was unsuccessfully attempting to contact the Commission's Technical Support staff via telephone when the submission period ended.<sup>9</sup> Accordingly, Elite failed to submit an FCC Form 175 application for Auction No. 23. The petition provides no other facts concerning the circumstances that resulted in Elite's failure to file on a timely basis. It is the applicant's responsibility to ensure that deadlines are met and that those entrusted with the task of preparing and filing short-form applications have the requisite skill and experience to accomplish the task.<sup>10</sup>

On the basis of the record before us, we are not persuaded that Elite has demonstrated that application of 47 C.F.R. §§ 101.1104 and 1.2105 to its case would undercut or frustrate the rules' purpose, nor do we find that Elite has presented unique circumstances sufficient to justify grant of its waiver request. The Commission's Rules and the *LMDS Public Notice* provided comprehensive notice of filing procedures for Auction No. 23.<sup>11</sup> The Commission's rules are best served by applying deadlines in a fair and consistent manner.

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<sup>5</sup> See "Auction of Local Multipoint Distribution Service Spectrum; Auction Notice and Filing Requirements for 168 Local Multipoint Distribution Service Licenses Scheduled for April 27, 1999; Minimum Opening Bids and Other Procedural Issues," *Public Notice*, DA 99-266 (rel. January 29, 1999) ("*LMDS Public Notice*").

<sup>6</sup> See *LMDS Public Notice* at p. 13, n. 20. See also 47 C.F.R. § 1.2105.

<sup>7</sup> *LMDS Public Notice* at 13.

<sup>8</sup> *Id.*

<sup>9</sup> Petition at 2-3.

<sup>10</sup> See Letter from Amy J. Zoslov, Chief, Auctions and Industry Analysis Division, to John Reardon, Esq., Secretary to the Board of Directors and General Counsel, Mobex Communications, 13 FCC Rcd 17,877 (1998).

<sup>11</sup> See *LMDS Public Notice* at pages 3, 6, and 13.

Ms. Sylvia Lesse  
April 13, 1999  
Page Three

We also believe that Elite had sufficient time to submit its application prior to the filing deadline. The Commission specifically cautioned applicants to file early and allow adequate time for filing their applications.<sup>12</sup> Moreover, applicants are responsible for ensuring that their computer systems are adequate to connect and interface with the Commission's filing software.<sup>13</sup> Accordingly, we are not convinced that a grant of the waiver is warranted or would be in the public interest.

Therefore, Elite's request for a waiver of the short-form application submission deadline rules, 47 C.F.R. §§ 101.1104 and 1.2105, is denied. This action is taken under delegated authority pursuant to Section 0.331 of the Commission's Rules.<sup>14</sup>

Sincerely,

Amy J. Zoslov  
Chief, Auctions and Industry Analysis Division  
Wireless Telecommunications Bureau

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<sup>12</sup> *LMDS Public Notice* at 13.

<sup>13</sup> *Id.*

<sup>14</sup> 47 C.F.R. § 0.331.